General Assembly

Substitute Bill No. 6526

January Session, 2013

AN ACT CONCERNING CHILDREN'S PRODUCTS AND CHEMICALS OF HIGH CONCERN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) For purposes of this section and sections 2 to 8, inclusive:

(1) "Chemical" means (A) a substance with a distinct molecular composition, or (B) a group of structurally-related substances. "Chemical" includes the breakdown products of the substance or substances that form through decomposition, degradation or metabolism;

(2) "Chemical of high concern to children" means a chemical identified by the Commissioner of Public Health pursuant to section 2 of this act;

(3) "Children's product" means a consumer product designed or intended primarily for children under twelve years of age, including, but not limited to, clothing, baby products, toys, car seats, personal care products and any consumer product containing a chemical of high concern that when used or disposed of will likely result in a child twelve years of age or younger, or a fetus, being exposed to such chemical. "Children's product" does not include over-the-counter drugs, prescription drugs, food, dietary supplements, packaging,

medical devices and products that are both a cosmetic and a drug regulated by the federal Food and Drug Administration. A product label that includes usage instructions for a product that applies to children does not in and of itself establish that the product is a children's product;

(4) "Consumer product" means any item sold for residential or commercial use, including any component parts and packaging, that is sold for: (A) Use in a residence, child care facility, licensed pursuant to section 17a-145 of the general statutes, or school, as defined in subsection (g) of section 10-233a of the general statutes; or (B) an outdoor residential use if any child twelve years of age or younger may have direct contact with the item. "Consumer product" does not include (i) a food or beverage or an additive to a food or beverage, a tobacco product or a pesticide regulated by the United States Environmental Protection Agency, (ii) a drug or biologic regulated by the United States Department of Health and Human Services or federal Food and Drug Administration or the packaging of a drug or biologic regulated by the federal Food and Drug Administration if the packaging is also regulated by the federal Food and Drug Administration, or (iii) an item sold for outdoor residential use that includes composite material made from polyester resins;

(5) "Distributor" means a person who sells consumer products to retail establishments on a wholesale basis;

(6) "Intentionally-added chemical" means a chemical that was added during the manufacture of a product or product component to provide a specific characteristic, appearance or quality, or to perform a specific function;

(7) "Manufacturer" means any person who manufactured a final consumer product or whose brand name is affixed to the consumer product. In the case of a consumer product that was imported into the United States, "manufacturer" includes the importer or first domestic distributor of the consumer product if the person who manufactured

or assembled the consumer product or whose brand name is affixed to the consumer product does not have a presence in the United States;

(8) "Priority chemical" means a chemical identified by the Commissioner of Public Health that is known, on the basis of credible scientific evidence, to: (A) Harm the normal development of a fetus or child or cause other developmental toxicity; (B) cause cancer, genetic damage or reproductive harm; (C) disrupt the endocrine system; (D) damage the nervous system, immune system or organs or cause other systemic toxicity; (E) be persistent, bioaccumulative and toxic; or (F) be very persistent and very bioaccumulative;

(9) "Very bioaccumulative" means having a bioconcentration factor or bioaccumulation factor equal to or greater than five thousand, or having a log Kow greater than 5.0; and

(10) "Very persistent" means having (A) a half-life in soil or sediment of greater than one hundred eighty days; or (B) a half-life equal to or greater than sixty days in water or evidence of long-range transport.

Sec. 2. (NEW) (*Effective from passage*) (a) The Commissioner of Public Health, in consultation with the Commissioner of Energy and Environmental Protection and the Commissioner of Consumer Protection, shall create and maintain a list of priority chemicals that are of high concern to children after considering a child's or developing fetus's potential for exposure to each chemical. Not later than January 1, 2014, and every two years thereafter, said commissioners shall identify two or more chemicals for inclusion on such list. Said commissioners may include chemicals that (1) are listed on the State of Maine Department of Environmental Protection's Chemicals of High Concern list and the State of Washington Department of Health's Chemicals of High Concern for Children list, or (2) meet one or more of the following criteria: (A) The chemical has been found through biomonitoring studies that demonstrate the presence of the chemical in human umbilical cord blood, breast milk, urine or other bodily tissues

or fluids; (B) the chemical has been found through sampling and analysis to be present in household dust, indoor air, drinking water or elsewhere in the home environment; or (C) the chemical has been added to or is present in a consumer product used or present in the home.

(b) Said commissioners shall review and revise the list of priority chemicals of high concern at least every two years and shall consider adding chemicals that meet the criteria set forth in subdivisions (1) and (2) of subsection (a) of this section.

Sec. 3. (NEW) (*Effective from passage*) Not later than one year after a chemical is placed on the list of priority chemicals in accordance with subsection (a) of section 2 of this act, a manufacturer of a children's product whose product contains such chemical, or a trade organization on behalf of its member manufacturers whose products contain such chemical, shall provide a Disclosure Notification Report to the Commissioner of Public Health in such form and in such manner as said commissioner prescribes, that such manufacturer's product contains an intentionally added priority chemical. Such report shall be filed biennially and shall include: (1) The name of the priority chemical and its Chemical Abstracts Service registry number; (2) a brief description of the product or product component containing the priority chemical; (3) a description of the function of the priority chemical in the product; (4) the amount of the priority chemical in the product; (5) the name, address and contact information for the manufacturer; and (6) such other information as the commissioner may require. The commissioner may authorize a manufacturer to submit such report to the interstate chemicals clearinghouse, as described in section 6 of this act.

Sec. 4. (NEW) (*Effective from passage*) (a) Not later than two years after a chemical is placed on the list of priority chemicals in accordance with subsection (a) of section 2 of this act, a manufacturer that manufactures children's products containing a priority chemical shall submit a Product Innovation Plan to the Commissioner of Public

Health. The plan shall include: (1) A timeframe for removal of the identified priority chemical from the manufactured children's product; (2) an affidavit stating that any chemical used to replace the priority chemical is inherently less hazardous to children's health based on (A) supporting documentation that the replacement chemical is not (i) persistent, bioaccumulative and toxic, (ii) very persistent, bioaccumulative and toxic, (iii) very persistent and toxic, (iv) very bioaccumulative and toxic, or (v) known or likely to be carcinogenic, mutagenic, a reproductive or developmental toxicant, neurotoxicant or endocrine disrupting, or (B) a hazard assessment protocol; or (3) a plan and timeline acceptable to the commissioner for conducting research to identify inherently less hazardous substitutes if none currently exist for specific identified uses.

(b) The Commissioner of Public Health may authorize the interstate chemicals clearinghouse, as described in section 6 of this act, to review and determine the adequacy of the plan pursuant to subsection (a) of this section.

(c) The plan shall be approved by the commissioner if it meets the criteria specified in subsection (a) of this section and meets a three-year phase-out timeframe. If the plan fails to meet such criteria, the commissioner shall make recommendations to the General Assembly regarding (1) product labeling, (2) forfeiture of sales of that manufacturer's children's products in the state, or (3) civil penalties to be collected by the Department of Public Health.

Sec. 5. (NEW) (*Effective from passage*) A manufacturer that sells children's products containing a priority chemical in the state may consult with the Chemical Innovations Institute, as described in section 22a-903 of the general statutes, or other green chemistry research institution in the state to identify a replacement chemical that is inherently less hazardous to children's health, provided the identification of such replacement chemical includes supporting documentation pursuant to subparagraph (A) of subdivision (2) of subsection (a) of section 4 of this act.

Sec. 6. (NEW) (*Effective from passage*) The Commissioner of Public Health may, within available appropriations, participate in an interstate chemicals clearinghouse to (1) classify chemicals in children's products into one of the following four categories: (A) High concern, (B) moderate concern, (C) low concern, or (D) unknown concern; (2) organize and manage available data on chemicals, including, but not limited to, information on uses, hazards and environmental concerns associated with chemicals; (3) produce and inventory information on safer alternatives for specific uses of chemicals and model policies and programs related to such alternatives; (4) provide technical assistance to businesses and consumers relating to safer chemicals; and (5) perform other activities related to this section.

Sec. 7. (NEW) (*Effective from passage*) Not later than January 15, 2015, and biennially thereafter, the Commissioner of Public Health shall report to the joint standing committee of the General Assembly having cognizance of matters relating to public health on the status of the list of priority chemicals, created and maintained in accordance with section 2 of this act, and the number of (1) manufacturers that have submitted disclosure notification reports in the previous biennium, (2) manufacturers in compliance with the product innovation plans, and (3) products, users and manufacturers, if any, that the commissioner has exempted from the provisions of sections 3 to 5, inclusive, of this act.

Sec. 8. (NEW) (*Effective from passage*) The Commissioner of Public Health is authorized to assess a fee payable by the manufacturer or such manufacturer's trade association to cover the department's reasonable costs in processing and managing the information collected upon submission of a disclosure notification report and a product innovation plan. The commissioner shall not assess a fee on a manufacturer that submits a product innovation plan within two years after the date required and certifies in such plan that the priority chemical is removed without any substitution of another chemical.

Sec. 9. Section 21a-348 of the general statutes is repealed. (*Effective*

182 *from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	New section
Sec. 2	*from passage*	New section
Sec. 3	*from passage*	New section
Sec. 4	*from passage*	New section
Sec. 5	*from passage*	New section
Sec. 6	*from passage*	New section
Sec. 7	*from passage*	New section
Sec. 8	*from passage*	New section
Sec. 9	*from passage*	Repealer section

Statement of Legislative Commissioners:

In section 2(a), "human" was deleted for clarity and consistency; in section 3, "whose product contains such chemical" was added for clarity and consistency; in section 5, "pursuant to the criteria set forth in subdivisions (1) and (2) of subsection (a) of section 4 of this act" was changed to "to children's health, provided the identification of such replacement chemical includes supporting documentation pursuant to subparagraph (A) of subdivision (2) of subsection (a) of section 4 of this act" for clarity; and in section 8, technical revisions were made for clarity and consistency.

KID *Joint Favorable Subst.*